



**Billing Code:** 5001-06

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**2 CFR Parts 1103, 1104, and 1125**

**[DOD-2016-OS-0048]**

**RIN 0790-AJ45**

**Implementation of Governmentwide Guidance for Grants and  
Cooperative Agreements**

**AGENCY:** Office of the Secretary, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** This final rule is the first of a sequence of six rules in this issue of the *Federal Register*, which were published as Notices of Proposed Rulemaking (NPRMs) on November 7, 2016. The six rules collectively establish for DoD grants and cooperative agreements an updated interim implementation of Governmentwide guidance on administrative requirements, cost principles, and audit requirements for Federal awards. This final rule removes outdated portions of the DoD Grant and Agreement Regulations (DoDGARs) and replaces it with a new DoDGARs part containing revised implementation of the guidance, and establishes seven subchapters within DoD's chapter of the Grants and Agreements title of the Code of Federal Regulations.

**DATES:** This rule is effective *[insert date 60 days after publication of this rule in the Federal Register]*.

**FOR FURTHER INFORMATION CONTACT:** Barbara Orlando, Basic Research Office, telephone 571-372-6413.

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary**

**A. Purpose of the Final Rule**

The Department of Defense Grant and Agreement Regulations (DoDGARs) are being updated to, among other things, implement Office of Management and Budget (OMB) guidance to Federal agencies on administrative requirements, cost principles, and audit requirements applicable to Federal grants, cooperative agreements, and other assistance instruments (2 CFR part 200). DoD established an interim implementation of that guidance at 2 CFR part 1103 in December 2014 (79 FR 76047), pending comprehensive updates to the DoDGARs.

This final rule and the five additional rules immediately following it in this issue of the *Federal Register* implement the OMB guidance as it applies to general terms and conditions of DoD grants and cooperative agreements. The six final rules establish eleven new DoDGARs parts and make conforming changes to existing DoDGARs parts. They represent a major step toward completion of the needed updating of the DoDGARs. Additional updates to complete the overall revision of the DoDGARs will be published for public comment in subsequent notices of proposed rulemaking. Those proposals will focus on portions of the

DoDGARs that specify pre-award, time-of-award requirements, and post-award requirements. All portions of the DoDGARs remaining in chapter I, subchapter C of title 32 of the CFR ultimately will be relocated to chapter XI of title 2 of the CFR, with any updating that may be needed.

#### **B. Revisions Implemented by this Rule**

This final rule establishes 2 CFR part 1104 to serve as the central part of the DoDGARs that specifies for DoD Components which portions of the DoDGARs apply to DoD grants and cooperative agreements for various pre-award, time-of-award, and post-award purposes, pending completion of the remaining updates to the DoDGARs that are needed to fully implement the OMB guidance. It also removes the interim implementation of the guidance published in December 2014 at 2 CFR part 1103, as that implementation is superseded by this 2 CFR part 1104.

2 CFR part 1104 serves as the central hub to direct DoD Components' use of the other ten new parts issued as final rules in the *Federal Register* in chapter XI of 2 CFR, as well as parts of the DoDGARs that will remain for the time being in subchapter C, chapter I of title 32 of the CFR.

#### **C. Legal authorities for the regulatory action**

There are two statutory authorities for this final rule:

- 10 U.S.C. 113, which establishes the Secretary of Defense as the head of the Department of Defense; and

- 5 U.S.C. 301, which authorizes the head of an Executive department to prescribe regulations for the governance of that department and the performance of its business.

## **II. Regulatory History**

In December 2014 (79 FR 76047), DoD established an interim implementation of the final guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," published by the Office of Management and Budget (OMB) on December 26, 2013, in 2 CFR part 200 (Uniform Guidance—available at 78 FR 78589). DoD then published a Notice of Proposed Rulemaking (November 7, 2016 (81 FR 78356)) that proposed changes to 2 CFR Parts 1103, 1104, and 1125 in order to provide an organizing framework for the DoDGARs to make it easier for users of the regulations to locate the content that they need. This action responds to comments received on the proposed rule and finalizes the proposed changes.

## **III. Comments and Responses**

DoD received one public comment on the November 7, 2016 NPRM that proposed to (1) remove 2 CFR part 1103, the part of the DoDGARs that DoD adopted on December 19, 2014, as its interim implementation of the OMB guidance at 2 CFR part 200; and (2) replace that part with a new DoDGARs part—2 CFR part 1104—containing a revised implementation of the guidance. That comment from an anonymous individual pertains to this rulemaking

and the other five related rulemakings in today's *Federal Register*, thus it is addressed here.

*Comment:* The commenter indicated that consistent public concerns arise with the bureaucracy or even government at-large centered on perceived accountability and efficiency and this proposed rule provides an opportunity for accessibility and increases overall agency efficiency. The commenter noted that (1) the changes impact a wide range of institutions and will allow for improvements in communication between government and the institutions it interacts with at each level, and (2) this regulatory action has the potential to provide much needed uniformity to the grant process. The commenter further indicated that this regulatory action will increase the efficiency for individuals attempting to access grant and agreement information by allocating a central hub of information. It will allow affected parties to identify and utilize information at a faster rate and will eliminate the complications of sorting through multiple sources. The commenter also recognized that, while some may argue that the time required to centralize this process and communicate changes could increase problems in the short-term, it is his or her belief that standardizing the overall process will result in positive long-term benefits.

The commenter also specified that the additional NPRMs regarding the DoDGARs create an increase in the ability of the process to be understandable by all agencies and institutions that interact with the DoD. Differences in definitions or how guidelines are worded would be reduced through these regulatory actions, and it would promote necessary standardization for the awards process. The commenter's belief is that adoption of the proposed rules will assist the intended groups listed such as hospitals, higher education institutions, and alternate levels of government by increasing accessibility across the board. The intention to create a central hub, providing standard definitions and wording and utilizing plain language, will allow for an increase in governmental accountability and efficiency that can heavily influence overall public trust.

*Response:* We appreciate the commenter's insights concerning the intent and expected outcomes of this rulemaking.

Title 2 CFR part 1104 incorporates, with limited changes as indicated below, ten other new DoDGARs parts, which are in four of the five final rules following this one, by referencing their applicability. Those final rules (1) provide standard wording of general terms and conditions governing administrative requirements for DoD grants and cooperative agreements awarded to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes; (2) provide

standard wording for general terms and conditions addressing national policy requirements for DoD grants and cooperative agreements awarded to all types of entities; (3) establish a standard award format for DoD grants and cooperative agreements, and (4) establish a central DoDGARS part with definitions of terms used in those regulations. The fifth final rule provides conforming changes in existing parts of the DoDGARS.

The changes in 2 CFR part 1104 are as follows:

- In 2 CFR 1104.105(a) (2) and 1104.110(b), we removed the word "new" as a modifier since 32 CFR part 34 has been continuously in effect and the administrative requirements contained therein (except as modified by the technical amendments to that part being made today) are to be used in all applicable awards until superseded.

- In 2 CFR 1104.115, we added at the end of the paragraph the words "...and other applicable Defense Grant and Agreement Regulatory System (DGARS) policies" to recognize that pending overall completion of the DoDGARS some policies that apply to DoD Components reside in the DGARS.

- Throughout, changed usage from "grant and cooperative agreements awards" to "grants and cooperative agreements" or "grants and cooperative agreements awarded to..." depending on the context to eliminate the redundancy of using the defined term "award(s)" to modify "grants and cooperative agreements."

#### **IV. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders (E.O.s) related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as a "not significant" regulatory action, and not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB) under the requirements of these Executive Orders.

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified



for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.” This rule is not subject to the requirements of this Executive Order because it is not significant under Executive Order 12866.

### **Cost**

DoD has found that this rule will not impose costs to the public because this consolidation standardizes multiple approaches to the award and administration of DoD grants and cooperative agreements.

### **Benefits**

DoD determined that issuing a revision of the implementation of OMB guidance in 2 CFR part 200 and creating a central hub in the DoD Grant and Agreement Regulations will help maximize long-term benefits to the public by standardizing multiple approaches to the award and administration of DoD grants and cooperative agreements previously used by DoD Components.

### **Alternatives**

1. No Action - If no action was taken, DoD would not be in compliance with OMB requirements to move all financial assistance regulations to 2 CFR.
2. Next Best alternative - The next best alternative is to subject all awards, regardless of where they are in their current life cycle, to the requirements of this final rule. Since awards are performed over a 1-5-year life

cycle, it would not be beneficial to the public to impose the requirements of this final rule on an award that is near the end of its life cycle. Therefore, this is not an acceptable alternative, as it would impose additional requirements on award recipients without offering an added benefit.

#### **B. Congressional Review Act (5 U.S.C. § 801, et seq.)**

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of \$100 million or more or have certain other impacts. This rule is not a major rule under the Congressional Review Act.

#### **C. Impact on Small Entities**

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will not impose any impacts on any entities. This means that there will be no economic impacts on any entities. Therefore, the Department of

Defense under the Regulatory Flexibility Act<sup>1</sup>certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### **D. Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person in the FOR FURTHER INFORMATION CONTACT section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business.

#### **E. Unfunded Mandates Reform Act**

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<sup>1</sup> 5 U.S.C. 601 et seq (1980)

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531-1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any 1 year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### **F. Collection of Information**

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501-3520) applies to collections of information using identical questions posed to, or reporting or recordkeeping requirements imposed on, ten or more members of the public. This rule does not call for a new collection of information under the PRA.

#### **G. Federalism**

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule does not have federalism implications that warrant the preparation of a federalism assessment in accordance with Executive Order 13132.

## **List of Subjects in 2 CFR Parts 1103, 1104, and 1125**

Business and Industry, Colleges and universities, Cooperative agreements, Grants administration, Hospitals, Indians, Nonprofit organizations, Small business, State and local governments.

Accordingly, under the authority of 5 U.S.C. 301 and 10 U.S.C. 113, 2 CFR chapter XI is amended as follows:

### **PART 1103—[REMOVED]**

1. Part 1103 is removed.
2. Subchapter A to chapter XI, consisting of parts 1100 through 1109, is added to read as follows:

### **Subchapter A -- General Matters and Definitions**

#### **PARTS 1100-1103—[RESERVED]**

### **PART 1104—IMPLEMENTATION OF GOVERNMENTWIDE GUIDANCE FOR GRANTS AND COOPERATIVE AGREEMENTS**

Sec.

1104.1 Purpose of this part.

1104.100 Award format for DoD Components' grants and cooperative agreements.

1104.105 Regulations governing DoD Components' general terms and conditions.

1104.110 Regulations governing DoD Components' award-specific terms and conditions.

1104.115 Regulations governing DoD Components' internal procedures.

1104.120 Definitions.

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

**§1104.1 Purpose of this part.**

This part provides an update to the DoD interim implementation of Office of Management and Budget (OMB) guidance in 2 CFR part 200. It supersedes the initial interim implementation of that guidance that DoD adopted in 2 CFR part 1103 on December 19, 2014.

**§1104.100 Award format for DoD Components' grants and cooperative agreements.**

DoD Components must conform the format of new grants and cooperative agreements to the standard award format specified in part 1120 of the DoD Grant and Agreement Regulations (DoDGARS) (2 CFR part 1120). The standard format provides locations within the award for:

(a) General terms and conditions, including the administrative and national policy requirements discussed in §1104.105(a) and (b), respectively.

(b) Any award-specific terms and conditions discussed in §1104.110.

**§1104.105 Regulations governing DoD Components' general terms and conditions.**

(a) *Administrative requirements.* On an interim basis pending completion of the update of the DoDGARS to implement OMB guidance published in 2 CFR part 200, the following regulatory provisions govern the administrative requirements to be included in general terms and conditions of DoD Components' new grants and cooperative agreements:

(1) The provisions of parts 1126 through 1138 of the DoDGARS (2 CFR parts 1126 through 1138, which comprise subchapter D of this chapter) govern the administrative requirements to be included in the general terms and conditions of DoD Components' new grants and cooperative agreements awarded to institutions of higher education, nonprofit organizations, States, local governments, and Indian tribes.

(2) Part 34 of the DoDGARS (32 CFR part 34) governs the administrative requirements to be included in general terms and conditions of DoD Components' grants and cooperative agreements awarded to for-profit entities.

(b) *National policy requirements.* Part 1122 of the DoDGARS (2 CFR part 1122) governs the national policy requirements to be included in DoD Components' new grants and cooperative agreements awarded to all types of entities.

**§1104.110 Regulations governing DoD Components' award-specific terms and conditions.**

On an interim basis pending completion of the update of the DoDGARs to implement OMB guidance published in 2 CFR part 200:

(a) The guidance in 2 CFR part 200 governs administrative requirements to be included in any award-specific terms and conditions used to supplement the general terms and conditions of a new grant or cooperative agreement awarded to an institution of higher education, nonprofit organization, State, local government, or Indian tribe.

(b) Part 34 of the DoDGARs (32 CFR part 34) governs the administrative requirements to be included in any award-specific terms and conditions of DoD Components' grants and cooperative agreements awarded to for-profit entities.

**§1104.115 Regulations governing DoD Components' internal procedures.**

On an interim basis pending completion of the update of the DoDGARs to implement OMB guidance published in 2 CFR part 200, DoD Components' internal pre-award, time-of-award, and post-award procedures will continue to comply with requirements in parts 21 and 22 of the DoDGARs (32 CFR parts 21 and 22) and other applicable Defense Grant and Agreement Regulatory System (DGARS) policies.



## **§1104.120 Definitions.**

(a) *DoD Grant and Agreement Regulations or DoDGARs* means the regulations in chapter I, subchapter C of title 32, Code of Federal Regulations, and chapter XI of title 2, Code of Federal Regulations.

(b) *Other terms.* See part 1108 of the DoDGARs for definitions of other terms used in this part.

### **PARTS 1105-1109—[RESERVED]**

3. Subchapter B to chapter XI, consisting of parts 1110 through 1119, is added and reserved to read as follows:

#### **Subchapter B—[RESERVED]**

### **PARTS 1110-1119—[RESERVED]**

4. Subchapter C to chapter XI, consisting of parts 1120 through 1125, is added to read as follows:

#### **Subchapter C—Award Format and National Policy Terms and Conditions for All Grants and Cooperative Agreements**

### **PARTS 1120-1124—[RESERVED]**

### **PART 1125—[TRANSFERRED TO SUBCHAPTER C]**

5. Part 1125 is transferred to subchapter C.

6. Subchapter D to chapter XI, consisting of parts 1126 through 1140, is added to read as follows:

#### **Subchapter D—Administrative Requirements Terms and Conditions for Cost-Type Grants and Cooperative Agreements to Nonprofit and Governmental Entities**

**PART 1126–1140—[RESERVED]**

7. Subchapter E to chapter XI, consisting of parts 1141 through 1155, is added and reserved to read as follows:

**Subchapter E—[RESERVED]**

**PARTS 1141–1155—[RESERVED]**

8. Subchapter F to chapter XI, consisting of parts 1156 through 1170, is added and reserved to read as follows:

**Subchapter F—[RESERVED]**

**PART 1156–1170—[RESERVED]**

9. Subchapter G to chapter XI, consisting of parts 1171 through 1199, is added and reserved to read as follows:

**Subchapter G—[RESERVED]**

**PART 1171–1199—[RESERVED]**

Dated: July 24, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of  
Defense.

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